

REMARKS

The present Amendment is in response to the Office Action mailed January 25, 2008. A Petition for a two-month extension of the term for response to said Office Action, to and including June 25, 2008, is transmitted herewith.

Applicants would like to thank the Examiner for conducting a telephone interview with Applicants' undersigned attorney on April 29th, 2008 to discuss the present invention. This interview is evidenced in the Examiner Interview Summary of May 2, 2008.

Claims 1, 3-12, and 16-18 were rejected in the Action. Claims 1 and 16 have been amended in order to further clarify the claimed invention. Support for all claim amendments can be found in the specification in at least paragraphs [0054]-[0058]. Claims 5-8 and 18 have been cancelled. No claims have been added herein. Therefore, Claims 1, 3-4, 9-12, and 16-17 are pending in the present application. The following sets forth Applicants' remarks relating to the currently pending claims and the outstanding Action.

In the Action, the Examiner objected to the specification as failing to provide proper antecedent basis for the claimed subject matter. Applicants refer the Examiner to paragraph [0054] of the specification stating, "Now referring to Figs. 10 and 11, a preferred embodiment of a distractor 6000 is disclosed, comprising essentially a plying device 6100 such as but not limited to a *Beere-style distractor* and a pair of opposing forks 6200 adapted to engage therebetween an implant such as a disc 160." (emphasis added). Such a Beere-type distractor is disclosed in U.S. Pat. No. 6,551,316 included in an Information Disclosure Statement submitted herewith. Applicants assert that one skilled in the art could also look to the drawings, which are part of the specification in order to

understand that the device has fork shaped extensions that move and are in parallel planes when in open and closed positions. For the foregoing reasons, Applicants respectfully request the Examiner remove the current objection to the specification.

Further in the Action, the Examiner rejected claims 1, 3-5, 8-10, 16, and 18 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,261,296 to Aebi et al. ("Aebi"), claims 6 and 7 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and EP Patent No. 1,219,266 to Neumann ("Neumann"), claim 11 under 35 U.S.C. 103(a) as being obvious over the combination of Aebi and DE 3023942 to Keller ("Keller"), claim 12 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and U.S. Patent No. 6,080,155 to Michelson ("Michelson"), and claim 17 under 35 U.S.C. § 103(a) as being obvious over the combination of Aebi and U.S. Patent No. 5,401,269 to Buttner-Janz et al. ("Buttner-Janz"). In short, the Examiner stated in the Official Action that it was his belief that each and every one of the currently pending claims is either anticipated or obviated by the prior art cited. Most importantly, the Examiner rejected independent claims 1, 16, and 18 as being fully anticipated by Aebi. In light of the above made amendments of the currently pending claims, Applicants respectfully submit that such claims, as amended, overcome the rejections set forth by the Examiner.

Applicants have amended independent claims 1 and 16 by incorporating some of the limitations from canceled claims 6-7, among other limitations, that are clearly not disclosed or suggested in Aebi (by the Examiner's own admission). For the foregoing reasons, independent claims 1 and 16 are not anticipated by Aebi. Claims 3-4 and 9-10 are unanticipated, *inter alia*, from their dependence from independent claim 1. A

dependent clam is necessarily narrower than the claim from which it depends.

Amended independent claims 1 and 16 are also unobvious over Aebi in view of Neumann. Among other limitations, neither Aebi nor Neumann teach or suggest an instrument having forked-shaped extensions including a base and two tines extending from the base, "wherein the base includes a forward ridge portion perpendicular to an outwardly facing surface of the tines such that the forward ridge portion forms a vertebral body stop as said instrument is inserted into an intervertebral space" and the fork-shaped extensions having interior sides facing each other, the interior sides having a notch and a curved profile, the interior sides facing each other such that said curved profile of the interior sides form a passage dimensioned to accommodate the passage of an artificial intervertebral disc and the notches of said interior sides are adapted to accommodate a vertebral body stop of a disc manipulation instrument. Therefore, Aebi and Neumann cannot be used to support a *prima facie* case of obviousness. For the foregoing reasons, amended independent claims 1 and 16 are unobvious over Aebi in view of Neumann and are in condition for allowance. Claims 3-4 and 9-10 depending from claim are unobvious and should be allowable, *inter alia*, from their dependence from independent claim 1. Buttner-Janz does not cure the deficiency of independent claim 16 and therefore claim 17 depending therefrom should also be in condition for allowance.

In light of the above, Applicants respectfully submit that independent claims 1 and 16 constitute allowable subject matter. Although each of the remaining dependent claims have not been discussed specifically herein, Applicants also respectfully submit that such constitute allowable subject matter based upon their dependence from one of independent

claims 1 or 16. Therefore, Applicants respectfully request allowance of each and every one of the currently pending claims.


As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 25, 2008

Respectfully submitted,

By 
William A. Di Bianca
Registration No.: 58,653
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicants